



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 15, 1996

Mr. Frank Stenger-Castro
General Counsel
Texas Workers' Compensation Insurance Facility
8303 MoPac Expressway North, Suite 310
Austin, Texas 78759-8396

OR96-0196

Dear Mr. Stenger-Castro:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37346.

The Texas Workers' Compensation Insurance Facility (the "facility") received a request for the underwriting files on Krew Staffing, Inc. and Lattimore Materials Company. You assert that all information in these files is excepted from disclosure by sections 552.103 and 552.111 of the Government Code. You also state that Krew Staffing, Inc. and Lattimore Materials Company, as third parties, may have privacy and proprietary interests in the requested information. Pursuant to section 552.305 of the Government Code, we notified these parties of the request and of their obligation to claim the exceptions to disclosure they believe apply to the requested information. The parties did not respond. We therefore consider only the exceptions you claim.

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.-Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You have referenced pending litigation and demonstrated how the requested information relates to that litigation. Although markings on the documents are not clear, we assume from your letter that you are asserting section 552.103 for all of the documents submitted to this office. Consequently, the requested documents are excepted from disclosure by section 552.103.

We note that during the pendency of the litigation, once all parties to litigation have gained access to the information at issue, through discovery or otherwise, section

552.103(a) is no longer applicable. Open Records Decisions Nos. 551 (1990), 454 (1986). Further, once the litigation has concluded, section 552.103(a) is no longer applicable.¹ Open Records Decision No. 350 (1982). Because we have ruled that you may withhold the requested information under section 552.103, we need not address your claim that section 552.111 excepts the information from disclosure.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref.: ID# 37346

Enclosures: Submitted documents

cc: Mr. Jerry P. Rose
Executive Vice President
National Construction Industry Division
Rollins Hudig Hall Agency of Texas, Inc.
2200 Ross Avenue, Suite 1700
Dallas, Texas 75201
(w/o enclosures)

Krew Staffing, Inc.
214-B N. Kentucky
McKinney, Texas 75069
(w/o enclosures)

Lattimore Materials Company
P.O. Box 556
McKinney, Texas 75070-0556
(w/o enclosures)

¹We note, however, that some of the information may be confidential and thus may not be released to the public even after the litigation has concluded.